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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,094	01/23/2004	Jeannie Holmes	022265.0131PTUS (018220.0)	8557
7590	10/23/2006		EXAMINER NUTTER, NATHAN M	
IP Department Patton Boggs, LLP 2001 Ross Avenue Suite 3000 Dallas, TX 75201			ART UNIT 1711	PAPER NUMBER
DATE MAILED: 10/23/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER
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20061017

DATE MAILED:

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Commissioner for Patents

Nathan M. Nutter
Primary Examiner
Art Unit: 1711

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/764,094	Applicant(s) HOLMES ET AL.	
	Examiner Nathan M. Nutter	Art Unit 1711	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 October 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires FIVE months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

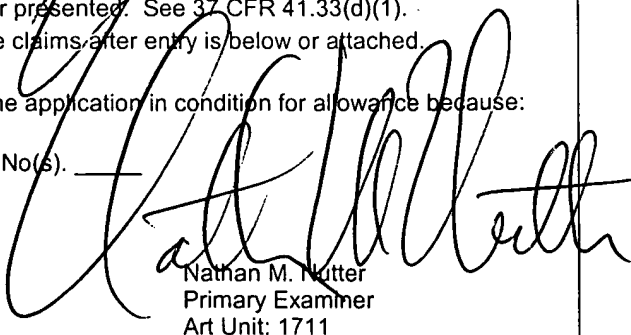
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.


 Nathan M. Nutter
 Primary Examiner
 Art Unit: 1711

Continuation of 11. does NOT place the application in condition for allowance because: See the Final Rejection. applicants have not established that cork is not oak or that "ground cork" differs in any regard to "oak dust." Applicants may be their own lexicographer if the terms are not defined in derogation of their known meanings. Note MPEP 2173.05(a) III, where it states "a patentee or applicant may use terms in a manner contrary to or inconsistent with one or more of their ordinary meanings if the written description clearly defines the terms." This has not been done. Applicants simplistically assert that the statement "(o)ak dust sometimes used to enhance the flavor of wine" is a definition because of the use of the word "is." This runs counter to accepted meanings for definitions since it attempts to equate "oak dust" with its usage as opposed to what it comprises. The Declaration to Tiberia is not deemed relevant, for the reasons pointed out in the Final Rejection. It also fails to define the oak over the cork of the references, since cork is an oak. The Declaration to Holmes is deemed unpersuasive, as well, as pointed out in the Final rejection. With regard to the Interview Summary Form, applicants have mischaracterized what was agreed upon, that being, "a Declaration showing the differences between the recited and claimed oak dust and cork (as ground)." Nothing in the interview was stated as to definitions, but to actual reasoning why cork (ground) is not oak dust. This, in view of the classification of cork as an oak. Applicants opine the references don't teach all of the claim limitations. They require the standards of 35 USC 102 when the rejection was made, and is being maintained for the reasons set out, under 35 USC 103.. Applicants opine that "natural cork is not equivalent to or suggestive of oak dust" yet provide no evidence. Clearly this is misconstrued since the references teach granulated or ground cork, first of all. The Examiner challenges applicants to support their absurd contentions that cork is not an oak. Applicants have shown no differences between "granulated" and "ground" as opposed to "dust." Motivation to combine has been shown in the Final Rejection. The references are drawn to analogous art as discussed in the Final Rejection.